

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

LOUIS A. PONTARELLI                                 :     CIVIL ACTION  
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  :     :  
  :     :  
UNITED STATES DEPARTMENT OF THE               :     :  
TREASURY, et al.                                 :     NO. 98-5081

**MEMORANDUM AND ORDER**

HUTTON, J.

March 9, 1999

In this action, Plaintiff Louis A. Pontarelli ("Plaintiff") seeks restoration of his firearms privileges. On February 28, 2000, the Court conducted a bench trial. In accordance with Federal Rule of Civil Procedure 52(a), the Court now enters the following findings of fact and conclusions of law.

**I. FINDINGS OF FACT**

1. In 1991, Plaintiff, Louis A. Pontarelli ("Plaintiff"), pled guilty to giving a thing of value to a public official in violation of 18 U.S.C. § 666(a)(2).
2. Pursuant to his plea, Plaintiff was sentenced to three years probation, fined, ordered to pay restitution totaling \$4,000, and ordered to perform two hundred hours of community service, all of which Plaintiff satisfied.
3. Plaintiff is subject to the jurisdiction of the Gun Control Act of 1968 ("GCA"), 18 U.S.C. § 922(g), which prohibits Plaintiff from, inter alia, possessing any firearms or ammunition.

Accordingly, it is unlawful for Plaintiff to possess a firearm or ammunition for any reason whatsoever.

4. In 1998, Plaintiff petitioned for relief from his firearms disability, as authorized by 18 U.S.C. § 925(c).

5. The Bureau of Alcohol, Tobacco and Firearms ("ATF"), the federal agency authorized to grant such relief, denied Plaintiff's petition. The ATF explained to Plaintiff that Congress forbids the ATF from spending appropriated funds to consider and grant such relief.

6. Plaintiff thereafter sought review of the ATF's decision in this Court, claiming that "the ATF's failure and/or refusal to allow him to be heard and/or grant the requested relief is a 'miscarriage of justice.'" (Pl.'s Answer to Def.s' Mot. to Dismiss Compl. and/or for Summ. J. at 2).

7. Before he entered his guilty plea, Plaintiff was for 25 years an avid hunter and was also a member of a gun club and now wishes to be relieved from the restrictions placed on him by the GCA so that he may resume these activities.

8. Plaintiff consults in the construction field, works as a code enforcement officer who conducts inspections of various dwellings, and performs collections for his son's construction company. Plaintiff wishes to be relieved from the restrictions placed on him by the GCA as he occasionally works in potentially dangerous situations. He would like the opportunity to possess a firearm for

his personal safety as he fears for his safety after making collections for his son's construction company and when he inspects dwellings for code compliance.

9. Plaintiff is also concerned for "home safety" as there recently were burglaries and a murder in Clifton Heights, Pennsylvania, the borough in which he and his spouse live and share a home with his spouse's mother. Due to his concern for "home safety," Plaintiff wishes to be relieved from the restrictions placed on him by the GCA.

10. Louis Pontarelli, Jr., ("Mr. Pontarelli") Plaintiff's son, now owns and operates the construction company that Plaintiff owned and operated prior to his retirement. Mr. Pontarelli, Jr. testified as to the types of work Plaintiff performs for the company, including consulting, some manual labor, and collections. Often, at the end of a job, Plaintiff will physically take receipt of the sum owed to his son's company for the work it performed. On occasion, Plaintiff takes receipt of cash. Mr. Pontarelli, Jr. also testified that his interactions with the public while working in the construction field makes him fearful for his personal safety. Mr. Pontarelli, Jr. testified that in light of the above, he is in favor of his father having his gun privileges restored.

11. Anne M. Pontarelli, ("Mrs. Pontarelli"), Plaintiff's spouse, testified that prior to Plaintiff 's 1991 guilty plea, Plaintiff stored his weapons in a locked gun closet at all times. She also

testified that she favors her husband having his firearms privileges restored because of the crimes that recently occurred in their community. She testified she never knew her husband to be a violent person or to be an abuser of drugs or alcohol

12. Ronald A. Berry ("Berry"), the former Chief of Police of the Borough of Clifton Heights, Pennsylvania, and the current director of the Delaware County Juvenile Detention Center in Lima, Pennsylvania, testified that he has known Plaintiff for approximately 16 years and that he does not know Plaintiff to be a violent person or an abuser of drugs or alcohol. Berry testified that he does not believe Plaintiff will be a danger to any person or the community if his gun privileges are restored.

13. Walter J. Senkow ("Senkow"), the Chief of Police of the Borough of Clifton Heights, Pennsylvania, testified that he has known Plaintiff for 27 years in various capacities. Significantly, Senkow was a member of the gun club to which Plaintiff formerly belonged. Senkow testified that Plaintiff is a strong and honest member of the community and that he favors the restoration of Plaintiff's firearms privileges. He testified that he has no knowledge of Plaintiff's involvement with the criminal justice system other than his 1991 guilty plea regarding violation of 18 U.S.C. § 666(a)(2). Senkow also testified that if Plaintiff's firearms privileges are reinstated, he does not believe that

Plaintiff will be a danger to public safety or the safety of any other person or entity.

14. The Court accepts the representations of the witnesses that testified on Plaintiff's behalf that Plaintiff is of sound character and is not likely a threat to either public safety or the safety of any person or entity.

## **II. CONCLUSIONS OF LAW**

15. It is a federal offense for any person who has been convicted of a crime punishable by imprisonment for a term exceeding one year to possess a firearm. 18 U.S.C. § 922(g)(1) (1999).

16. In the original statutory scheme, the Secretary of the Treasury was authorized to grant relief from § 922(g)(1) if

it is established to his satisfaction that the circumstances regarding the [firearms] disability, and the applicant's record and reputation, are such that the applicant will not be likely to act in a manner dangerous to public safety and that the granting of the relief would not be contrary to public interest.

18 U.S.C. § 922(g)(1) (1999).

18. Congress, however, prohibits the expenditure of appropriated funds to investigate applications for such relief. See United States v. Quintiliani, No. 75-438, 1997 WL 430973, at \*2 (E.D. Pa. July 15, 1997).

19. Nevertheless, in light of the Secretary of the Treasury's inability to investigate and grant relief from firearms disability, the Third Circuit Court of Appeals held that the unavailability of

an administrative remedy does not foreclose an applicant from seeking judicial review of his or her application. See Rice v. United States, 68 F.3d 702, 704 (3d Cir. 1995).

20. The Rice court established the following test for evaluating whether an existing federal firearms disability should be sustained or lifted. First, the Court must determine in the exercise of its sound discretion whether the facts alleged in Plaintiff's Complaint indicate a potential for a miscarriage of justice if the relief requested is denied. See id. at 710. If the Court resolves this issue in favor of Plaintiff, the Court should permit Plaintiff to submit evidence of his fitness to have his firearms disability revoked. See id. Third, the Court must then determine whether Plaintiff's evidence satisfies the § 925(g) standard. See id. Plaintiff carries a heavy burden in attempting to sustain his statutory claim. See id.

21. It is important to note the Supreme Court's announcement that the right to possess a firearm after a disabling conviction is not a right but a privilege. See Lewis v. United States, 445 U.S. 55, 66, 100 S. Ct. 915, 921 (1980).

22. The Department of the Treasury promulgated regulations for granting relief under § 922(g)(1). See 27 C.F.R. § 178.444 (1999).

23. Upon careful review of these regulations, the Court concludes that Plaintiff presented facts sufficient to demonstrate compliance with said regulations in that Plaintiff, inter alia, submitted

three references recommending the granting of relief, and was discharged from parole or probation over two years prior to the filing of this action.

24. The Court finds that there exists the potential for a miscarriage of justice where, as here, Plaintiff meets the statutory requirements for such relief but due to a lack of Congressional funding, such relief is not available.

24. Upon considering all the evidence before it, the Court finds that Plaintiff will not be likely to act in a manner dangerous to public safety and that the granting of the relief would not be contrary to the public interest.

An appropriate Order follows.

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AND NOW, on this 9<sup>th</sup> day of March, 2000, for the reasons set forth in the accompanying Findings of Fact and Conclusions of Law, IT IS HEREBY ORDERED that the relief sought by Plaintiff, Relief from his Firearms Disability and for the Restoration of Federal Firearm Privileges pursuant to the Gun Control Act of 1968, is **GRANTED.**\<sup>1</sup>

HERBERT J. HUTTON, J.

1 For the sake of clarity, the Court does not herein authorize any local or state authority to reinstate Plaintiff's firearms privileges but only lifts the disability imposed on Plaintiff in 1991. The matters of obtaining licensure for carrying a hand gun and for hunting are left to the discretion of the appropriate state and/or local authorities.